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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/571,514	02/21/2007	Stefan Kullberg	39943	8061
116 7590 09/02/2010 PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108				
EXAMINER				
LUONG, VINH				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/571,514

Applicant(s)

KULLBERG ET AL.

Examiner

Vinh T. Luong

Art Unit

3656

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 June 2010 and 03 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 3656.
2. The amendment filed on June 28, 2010 has been entered.
3. The replacement drawings were received on June 28, 2010. These drawings are not accepted by the Examiner because the drawings are not in compliance with 37 CFR 1.84 as required by 37 CFR 1.121(d). Please see Form PTO-948 attached.
4. The *original* drawings are objected to for the reasons set forth in the Office action on April 6, 2010.
5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claims 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10/8/1 or 10/9/7/1 recites the limitation "the *first and second* springs" (emphasis added) in line 2. There is insufficient antecedent basis for this limitation in the claim because claim 8 requires only "a first return spring," meanwhile, claim 9 requires only "a second return spring."

7. Claims 1-4, 6, and 11 are rejected under 35 USC 103(a) as being unpatentable over Roelle (US 4,833,935).

Claim 1

Roelle teaches a throttle control device 10 *for* a hand held tool comprising a forwardly extending wire 102 for transmitting a motion from a throttle control lever 26 turnably arranged about a first axis 28, 30, 32, 34 to a throttle valve, one end of the wire 102 being secured to a wire arm 36 that is turnably arranged about a second axis 38, 40 (Roelle 3:27-35) and that is provided with *one* or several teeth 90 cooperating with a corresponding tooth 88 on the throttle control lever 26 characterized in that the second axis 38, 40 is arranged behind the first axis 28, 30, 32, 34 wherein the wire 102 is coaxially rotatable with the wire arm 36 about the second axis 38, 40. (Roelle 4:42-50; claims 1-9)

Roelle teaches the invention substantially as claimed. However, Roelle teaches one tooth of Roelle's lever cooperating with one tooth of Roelle's wire arm.

It is common knowledge in the art to change one tooth of Roelle's lever to the teeth in order to cooperate with one tooth of Roelle's lever. The use of the teeth instead of one tooth is notoriously well known in the art as evidenced by references cited (see, *e.g.*, the teeth 73, 77 in US 6,182,524 issued to Nagashima and the teeth 19 in US 7,000,593 issued to Muller *et al.*).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to change one tooth of Roelle's lever to the teeth in order to cooperate with one tooth of Roelle's lever as taught or suggested by common knowledge in the art. The change of one tooth of Roelle's lever to the teeth would not have been uniquely challenging to a person of ordinary skill in the art because it is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement" *KSR Int'l. Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) and it "does no

more than yield predictable results.” *KSR* at 1739. See also *Sjolund v. Musland*, 6 USPQ2d 2020, 2026 (CAFC 1988).

Claim 2

The wire arm 36 comprises a curved support surface 94 for the wire 102 as seen in the second axis direction (Roelle 4:6-15).

Claim 3

The support surface 94 extends at least around said second axis 38, 40.

Claim 4

The support surface 94 at least partly is circular.

Claim 6

The wire 102 is a part of a Bowden cable 102.

Claim 11

Referring the throttle control device to the merely intended use element, such as, a held tool/chain saw, is not accorded patentable weight. It is well settled that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then, it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

8. Claims 7-9 and 11, and claim 10, as best understood, are rejected under 35 USC 103(a) as being unpatentable over Roelle (US 4,833,935) in view of Hammond (US 4,028,804).

Claim 7

Roelle teaches the invention substantially as claimed. In addition, Roelle teaches a safety lever 22 that prevents the throttle control lever 26 from moving if the safety lever 22 is not activated.

Hammond teaches the safety lever 72 that prevents the throttle control lever 26 from moving if the safety lever 26 is not activated. (Hammond 6:47-8:18)

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute Roelle's safety lever with the functional or mechanical equivalent safety lever of Hammond in order to prevent the throttle control lever from moving if the safety lever is not activated as taught or suggested by Hammond. *KSR* and legal precedents regarding substituting equivalents known for the same purpose in MPEP 2144.06.

Claims 8-10

Roelle teaches the invention substantially as claimed. However, Roelle does not teach the throttle control lever being under the influence of the first and second return springs that are one-piece formed.

Hammond teaches the first and second return springs 70 and 64 (FIG. 2) that are one-piece formed in order to influence the throttle control lever 26. (Hammond 3:1-22)

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the first and second return springs that are one-piece formed in order to influence the throttle control lever of Roelle as taught or suggested by Hammond. *KSR*.

Claim 11

Roelle teaches the invention substantially as claimed. However, Roelle does not teach the hand held tool comprising a chain saw.

Hammond teaches the handheld tool comprising a chain saw.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Roelle's throttle control device for a chain saw as taught or suggested by Hammond. *KSR, supra*.

9. Claim 1 is further rejected under 35 USC 103(a) as being unpatentable over Roelle (US 4,833,935) in view of Nagashima (US 6,182,524) or Muller *et al.* (US 7,000,593).

Roelle teaches a throttle control device 10 *for* a hand held tool comprising a forwardly extending wire 102 for transmitting a motion from a throttle control lever 26 turnably arranged about a first axis 28, 30, 32, 34 to a throttle valve, one end of the wire 102 being secured to a wire arm 36 that is turnably arranged about a second axis 38, 40 (Roelle 3:27-35) and that is provided with *one* or several teeth 90 cooperating with a corresponding tooth 88 on the throttle control lever 26 characterized in that the second axis 38, 40 is arranged behind the first axis 28, 30, 32, 34 wherein the wire 102 is coaxially rotatable with the wire arm 36 about the second axis 38, 40. (Roelle 4:42-50; claims 1-9)

Roelle teaches the invention substantially as claimed. However, Roelle teaches one tooth of Roelle's lever cooperating with one tooth of Roelle's wire arm.

Nagashima teaches the teeth 73 of the lever 70 in order to cooperate with the teeth 77 of the wire arm 78. Similarly, Muller teaches the tooth 18 of the lever 8 in order to cooperate with the teeth 19 of the wire arm 26.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to change one tooth of Roelle's lever to the teeth in order to cooperate with

one tooth of Roelle's lever as taught or suggested by Nagashima or Muller. *KSR* and *Sjolund v. Musland, supra*.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Van Allen (FIG. 17).

11. Applicant's arguments filed June 28, 2010 have been fully considered but they are not persuasive.

DRAWINGS

The replacement drawings are not accepted for the reasons set forth above.

35 USC 112, ¶ 2nd

Applicant asserted that the amended claim 10 provides sufficient antecedent basis for all of the structure in claim 10. However, as noted, claim 10 is a multiple dependent claim. Claim 10/8/1 requires the second return spring that is not recited in claim 8 or 1. Similarly, claim 10/9/7/1 requires the first return spring that is not recited in claim 9 or 7 or 1. Thus, the amended claim 10 does not provide sufficient antecedent basis for claims 10/8/1 and 10/9/7/1.

35 USC 102(b)

The rejection of claims 1-6 under 35 USC 102(b) as being anticipated by Nagashima is withdrawn in view of Applicant's amendments to the claims. Applicant's arguments with respect to claims 1-4 and 6-11 have been considered but are moot in view of the new ground(s) of rejection.

CONCLUSION

In view of the foregoing, Applicant's request for an immediate allowance of the subject application is respectfully declined.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vinh T Luong/
Primary Examiner, Art Unit 3656